96TH CONGRESS S. 1654

To improve the Federal judicial machinery by clarifying and revising certain provisions of title 28, United States Code, relating to the judiciary and judicial review of international trade matters, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 2 (legislative day, June 21), 1979

Mr. DeConcini introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

- To improve the Federal judicial machinery by clarifying and revising certain provisions of title 28, United States Code, relating to the judiciary and judicial review of international trade matters, and for other purposes.
 - 1 Be it enacted by the Senate and House of Representa-
 - 2 tives of the United States of America in Congress assembled,
 - 3 That this Act may be cited as the "Customs Courts Act of
 - 4 1979".

5 TITLE I—PURPOSE

- 6 SEC. 101. The Congress declares that the purposes of
- 7 this Act are—

1	(a) to provide for a comprehensive system of judi-
2	cial review of civil actions arising from import transac-
3	tions, utilizing, whenever possible, the specialized ex-
4	pertise of the United States Customs Court and Court
5	of Customs and Patent Appeals and insuring uniform-
6	ity afforded by the national jurisdiction of these courts
7	(b) to assure access to judicial review of civil ac-
8	tions arising from import transactions, which access is
9	not presently assured due to jurisdictional conflicts
10	arising from the present ill-defined division of jurisdic-
11	tion between the district courts and the customs courts
12	(c) to provide expanded opportunities for judicia
13	review of civil actions arising from import transactions
14	(d) to grant to the customs courts the plenary
15	powers possessed by other courts established under ar-
16	ticle III of the Constitution; and
17	(e) to change the name of the United States Cus-
18	toms Court to the United States Court of International
19	Trade to be more descriptive of its expanded jurisdic-
20	tion and its new judicial function and purpose relating

to international trade in the United States.

- 1 TITLE II—COMPOSITION OF THE COURT OF IN-
- 2 TERNATIONAL TRADE AND ASSIGNMENT OF
- 3 JUDGES TO OTHER COURTS
- 4 SEC. 201. Section 251 of title 28, United States Code,
- 5 is amended by striking out the first and second paragraphs of
- 6 such section and inserting in lieu thereof the following:
- 7 "The President shall appoint, by and with the advice
- 8 and consent of the Senate, a chief judge and eight judges who
- 9 shall constitute a court of record known as the United States
- 10 Court of International Trade. The Court is a court estab-
- 11 lished under article III of the Constitution of the United
- 12 States. The chief judge shall be less than seventy years of
- 13 age and shall continue as chief judge until he reaches such
- 14 age, at which time the President shall, by and with the
- 15 advice and consent of the Senate, appoint a new chief judge.
- 16 The chief judge may continue to serve after reaching seventy
- 17 years of age until the appointment of a successor is confirmed
- 18 by the Senate.".
- 19 Sec. 202. (a) Section 293(b) of title 28, United States
- 20 Code, is amended by striking out all that appears after
- 21 "duties", and inserting in lieu thereof the following: "in any
- 22 circuit, either in a court of appeals or district court, upon
- 23 presentation of a certificate of necessity by the chief judge or
- 24 circuit justice of the circuit in which the need arises.".

- 1 (b) Section 293(d) of title 28, United States Code, is
- 2 amended to read as follows:
- 3 "(d) The chief judge of the Court of International Trade
- 4 may, upon presentation to him of a certificate of necessity by
- 5 the chief judge of the Court of Customs and Patent Appeals
- 6 or the chief judge of the Court of Claims, designate and
- 7 assign temporarily any judge of the Court of International
- 8 Trade to serve as a judge of the Court of Customs and
- 9 Patent Appeals or the Court of Claims.".

10 TITLE III—JURISDICTION OF THE COURT OF

11 INTERNATIONAL TRADE

- 12 SEC. 301. Sections 1581 and 1582 of title 28, United
- 13 States Code, are repealed.
- SEC. 302. Chapter 95 of title 28, United States Code, is
- 15 amended to read as follows:

16 "CHAPTER 95—COURT OF INTERNATIONAL TRADE

17 "§ 1581. Civil actions against the United States

- 18 "(a) The Court of International Trade shall have exclu-
- 19 sive jurisdiction of civil actions instituted by any person
- 20 whose protest pursuant to the Tariff Act of 1930 has been
- 21 denied, in whole or in part, by the appropriate customs offi-
- 22 cer, where the administrative decision, including the legality

[&]quot;Sec.

[&]quot;1581. Civil actions against the United States.

[&]quot;1582. Civil actions commenced by the United States.

[&]quot;1583. Setoffs, demands, and counterclaims.

[&]quot;1584. Cure of defects.

[&]quot;1585. Powers generally.

- 1 of all orders and findings entering into the same, involves: (1)
- 2 the appraised value of merchandise; (2) the classification and
- 3 rate and amount of duties chargeable; (3) all charges or exac-
- 4 tions of whatever character within the jurisdiction of the Sec-
- 5 retary of the Treasury; (4) the exclusion of merchandise from
- 6 entry or delivery under any provisions of the customs laws;
- 7 (5) the liquidation or reliquidation of an entry, or a modifica-
- 8 tion thereof; (6) the refusal to pay a claim for drawback; or
- 9 (7) the refusal to reliquidate an entry under section 520(c) of
- 10 the Tariff Act of 1930.
- 11 "(b) The Court of International Trade shall have exclu-
- 12 sive jurisdiction of civil actions instituted pursuant to sections
- 13 516 and 516A of the Tariff Act of 1930.
- 14 "(c) After the decision of the President has become
- 15 final, the Court of International Trade shall have exclusive
- 16 jurisdiction to review advice, findings, recommendations, and
- 17 determinations of the International Trade Commission pursu-
- 18 ant to sections 131, 201, 202, 203, 301, 406, and 503 of the
- 19 Trade Act of 1974, sections 336 and 338 of the Tariff Act of
- 20 1930, and section 22 of the Agricultural Adjustment Act,
- 21 solely for the purpose of determining the procedural regular-
- 22 ity of those actions.
- 23 "(d) After the decision of the President has become
- 24 final, the Court of International Trade shall have exclusive
- 25 jurisdiction to review the actions of the Office of the Special

- 1 Trade Representative pursuant to section 302(b)(1) and 304
- 2 of the Trade Act of 1974, solely for the purposes of deter-
- 3 mining the procedural regularity of those actions.
- 4 "(e) The Court of International Trade shall have exclu-
- 5 sive jurisdiction to review any decision of the Secretary of
- 6 Labor or the Secretary of Commerce certifying or refusing to
- 7 certify workers, communities, or businesses as eligible for ad-
- 8 justment assistance under the Trade Act of 1974. No injunc-
- 9 tion or writ of mandamus shall be issued in any case arising
- 10 under this subsection.
- 11 "(f) The Court of International Trade shall have exclu-
- 12 sive jurisdiction of any civil action brought by a party-at-
- 13 interest to review a final determination made under section
- 14 305(b)(1) of the Trade Agreements Act of 1979.
- 15 "(g) The Court of International Trade shall have exclu-
- 16 sive jurisdiction of any application for the issuance of a pro-
- 17 tective order under section 777(c)(2) of the Tariff Act of
- 18 1930.
- 19 "(h) In addition to the jurisdiction conferred upon the
- 20 Court of International Trade by this section, and subject to
- 21 the exceptions contained in paragraph (i), the Court of Inter-
- 22 national Trade shall have exclusive jurisdiction over all civil
- 23 actions against the United States, its agencies and its officers
- 24 which arise directly from import transactions and which arise
- 25 under the Tariff Act of 1930, the Trade Expansion Act of

- 1 1962, the Trade Act of 1974, or the Trade Agreements Act
- 2 of 1979.
- 3 "(i) The Court of International Trade shall not have
- 4 jurisdiction—
- 5 "(1) of any civil action arising under section 305
- 6 of the Tariff Act of 1930; or
- 7 "(2) to review any advice relating to classifica-
- 8 tion, valuation, rate of duty, marking, restricted mer-
- 9 chandise, entry requirements, drawbacks, vessel re-
- pairs, and similar matters issued by the Secretary of
- the Treasury to members of the public or members of
- the Customs Service other than in connection with a
- civil action instituted pursuant to subsections (a) and
- 14 (b) of this section: Provided, That this subsection shall
- not apply if a member of the public demonstrates that
- without substantial doubt, it would be commercially
- impractical to obtain judicial review pursuant to sub-
- sections (a) and (b) of this section.

19 "§ 1582. Civil actions commenced by the United States

- 20 "(a) The Court of International Trade shall have juris-
- 21 diction, upon transfer from a district court, over any civil
- 22 action which arises from an import transaction and which has
- 23 been instituted by the United States to—

1	"(1) recover a civil fine or penalty or enforce a
2	forfeiture imposed under any revenue statute adminis-
3	tered by the Customs Service;
4	"(2) recover upon a bond relating to the importa-
5	tion of merchandise required by the laws of the United
6	States or by the Secretary of the Treasury; or
7	"(3) recover customs duties.
8	"(b) A defendant may transfer a civil action referred to
9	in subsection (a) of this section by filing a motion to transfer
10	in the district court in which the action is pending.
11	"(c) The motion to transfer shall be filed within thirty
12	days after the service upon a defendant of a copy of the com-
13	plaint.
14	"(d)(1) Upon receipt of a motion to transfer, the district
15	court shall determine whether the civil action is an action
16	described in subsection (a) of this section. If the determina-
17	tion of the district court is affirmative, it shall order the
18	transfer.
19	"(2) In the case of a civil action described in subsection
20	(a) of this section, the United States shall be afforded an op-
21	portunity to object to the transfer and, if the United States
22	objects, such motion shall be granted only if the district court
23	determines that the civil action involves a substantial ques-
24	tion, other than the amount of any penalty involved, as to the
25	proper classification or valuation of imported merchandise.

- 1 The decision of the district court upon such motion shall be
- 2 final and conclusive and shall not be reviewable on appeal or
- 3 otherwise, except on appeal from a final judgment on the
- 4 merits.
- 5 "(e) Within ten days after the issuance of an order of
- 6 transfer, the clerk of the district court shall transmit copies of
- 7 all pleadings and documents to the Court of International
- 8 Trade.
- 9 "(f) Upon receipt of the copies of the pleadings and doc-
- 10 uments, the civil action shall be heard by the Court of Inter-
- 11 national Trade, sitting without a jury, and unless the parties
- 12 otherwise agree, the trial or hearing of the civil action shall
- 13 take place within the judicial district in which the civil action
- 14 was first instituted, as if the civil action had been instituted in
- 15 the Court of International Trade in the first instance.
- 16 "(g) The relevant provisions of sections 2461, 2462,
- 17 2463, 2464, and 2465 of this title shall apply in any action
- 18 transferred to the Court of International Trade pursuant to
- 19 this section.
- 20 "§ 1583. Setoffs, demands, and counterclaims
- 21 "The Court of International Trade shall have jurisdic-
- 22 tion to render judgment upon any setoff, demand, or counter-
- 23 claim asserted by the United States which arises out of the
- 24 same import transaction pending before the Court or a claim

- 1 to recover upon a bond relating to the importation of mer-
- 2 chandise or to recover customs duties.

3 "§ 1584. Cure of defects

- 4 "(a) If a civil action within the exclusive jurisdiction of
- 5 the Court of International Trade is filed in a district court,
- 6 the district court shall, in the interest of justice, transfer such
- 7 civil action to the Court of International Trade, where the
- 8 civil action shall proceed as if it had been filed in the Court of
- 9 International Trade on the date it was filed in the district
- 10 court.
- 11 "(b) If a civil action within the exclusive jurisdiction of a
- 12 district court or a court of appeals is filed in the Court of
- 13 International Trade, the Court of International Trade shall,
- 14 in the interest of justice, transfer such civil action to the ap-
- 15 propriate district court or court of appeals where the civil
- 16 action shall proceed as if it had been filed in the district court
- 17 or court of appeals on the date it was filed in the Court of
- 18 International Trade.

19 "§ 1585. Powers generally

- 20 "The Court of International Trade shall possess all the
- 21 powers in law and equity of, or as conferred by statute upon,
- 22 a district court of the United States.".

TITLE IV—COURT OF INTERNATIONAL TRADE 1 PROCEDURE 2 SEC. 401. Chapter 169 of title 28, United States Code, 3 is amended to read as follows: "CHAPTER 169—COURT OF INTERNATIONAL TRADE 5 6 **PROCEDURE** "Sec. "2631. Persons entitled to commence a civil action. "2632. Commencement of a civil action. "2633. Procedure and fees. "2634. Notice. "2635. Filing of official documents. "2636. Time for commencement of action. "2637. Exhaustion of administrative remedies. "2638. New grounds in support of a civil action. "2639. Burden of proof; evidence of value. "2640. Scope and standard of review. "2641. Witnesses; inspection of documents. "2642. Analysis of imported merchandise. "2643. Relief. "2644. Decisions; findings of fact and conclusions of law; effect of opinions. "2645. Retrial or rehearing. "2646. Precedence of cases. "§ 2631. Persons entitled to commence a civil action "(a) A civil action contesting the denial, in whole or in 8 part, of a protest under section 515 of the Tariff Act of 1930 10 may be instituted in the Court of International Trade by any person entitled to file a protest pursuant to section 514 of the Tariff Act of 1930. 12 "(b) A civil action contesting the denial, in whole or in 13

part, of a petition under section 516 of the Tariff Act of 1930

15 may be instituted in the Court of International Trade by any

16 domestic interested party.

- 1 "(c) A civil action contesting a determination listed in
- 2 section 516A of the Tariff Act of 1930 may be instituted in
- 3 the Court of International Trade by any interested party who
- 4 is a party to the proceeding in connection with which the
- 5 matter arises.
- 6 "(d) A civil action to review a final determination made
- 7 under section 305(b)(1) of the Trade Agreements Act of 1979
- 8 may be instituted by a party-at-interest.
- 9 "(e) A civil action involving applications for orders di-
- 10 recting the administering authority or the International
- 11 Trade Commission to make confidential information available
- 12 pursuant to section 777(c)(2) of the Tariff Act of 1930 may
- 13 be filed in the Court of International Trade by any interested
- 14 party who is a party to the administrative proceeding.
- 15 "(f) A civil action, other than one instituted pursuant to
- 16 section 777(c)(2) of the Tariff Act of 1930 or one contesting
- 17 the denial of a protest under section 515, the denial of a
- 18 petition under section 516, a determination under section
- 19 516A of the Tariff Act, or a determination under section
- 20 305(b)(1) of the Trade Agreements Act of 1979, may be in-
- 21 stituted in the Court of International Trade by any person
- 22 adversely affected or aggrieved by an agency action within
- 23 the meaning of section 702 of title 5, United States Code.
- 24 "(g) Except in cases instituted pursuant to section
- 25 1581(a) of this title or section 516 of the Tariff Act of 1930,

	10
1	any person, by leave of court, who would be adversely affect-
2	ed or aggrieved by a decision in a civil action pending in the
3	Court of International Trade, may intervene in that action.
4	In exercising its discretion, the court shall consider whether
5	the intervention will unduly delay or prejudice the adjudica-
6	tion of the rights of the original parties.
7	"(h) By leave of court, any person who would be ad-
8	versely affected or aggrieved by an order disposing of an ap-
9	plication for the issuance of an order pursuant to section
10	777(c)(2) of the Tariff Act may intervene with regard to that
11	application.
12	"(i)(1) The term interested party means—
13	"(A) a foreign manufacturer, producer, or export-
14	er, or the United States importer, of merchandise
15	which is the subject of an investigation under title $V\Pi$
16	of the Tariff Act of 1930 or a trade or business associ-
17	ation a majority of the members of which are importers
18	of such merchandise;
19	"(B) the government of a country in which such
20	merchandise is produced or manufactured;
21	"(C) a manufacturer, producer, or wholesaler in
22	the United States of a like product;

"(D) a certified union or recognized union or group of workers which is representative of an industry

1	engaged in the manufacture, production, or wholesale
2	in the United States of a like product; and
3	"(E) a trade or business association a majority of
4	whose members manufacture, produce, or wholesale a
5	like product in the United States.
6	"(2) The term domestic interested party means a party
7	as defined in subparagraphs (C), (D), and (E) of paragraph
8	(1).
9	"(3) The term party-at-interest means—
10	"(A) a foreign manufacturer, producer, or export-
11	er, or a United States importer of merchandise which
12	is the subject of a final determination;
13	"(B) a manufacturer, producer, or wholesaler in
14	the United States of a like product;
15	"(C) United States members of a labor organiza-
16	tion or other association of workers whose members
17	are employed in the manufacture, production, or
18	wholesale in the United States of a like product; and
19	"(D) a trade or business association a majority of
20	whose members manufacture, produce, or wholesale a
21	like product in the United States.
22	"(4) The term 'like product' means a product which is
23	like, or in the absence of like, most similar in characteristics
24	and uses with the article subject to an investigation under
25	title VII of the Tariff Act of 1930 or a final determination

- 1 under section 305(b)(1) of the Trade Agreements Act of
- 2 1979.
- 3 "§ 2632. Commencement of a civil action
- 4 "(a) Except as otherwise provided in subsection 516A of
- 5 the Tariff Act of 1930, each civil action in the Court of Inter-
- 6 national Trade shall be instituted by the filing of a summons,
- 7 or of a complaint, or both, each with the content and in the
- 8 form, manner, and style prescribed in rules adopted by the
- 9 Court.
- 10 "(b) The Court of International Trade may prescribe by
- 11 rule that any pleading or other document transmitted by reg-
- 12 istered or certified mail properly addressed to the clerk of the
- 13 Court with the proper postage affixed and return receipt re-
- 14 quested shall be filed as of the date of postmark.
- 15 "§ 2633. Procedure and fees
- 16 "(a) A filing fee shall be payable upon commencing an
- 17 action. The amount of the fee shall be fixed by the Court of
- 18 International Trade but shall be not less than \$5 nor more
- 19 than the filing fee for commencing a civil action in a United
- 20 States district court. The Court of International Trade may
- 21 fix all other fees to be charged by the clerk of the Court.
- 22 "(b) The Court of International Trade shall provide by
- 23 rule for pleadings and other papers, for their amendment,
- 24 service, and filing, for consolidations, severances, suspensions
- 25 of cases, and for other procedural matters.

1	"(c) All pleadings and other papers filed in the Court of
2	International Trade shall be served on all parties in accord-
3	ance with the rules of the Court. When the United States, its
4	agencies, or its officers are adverse parties, service of the
5	summons or complaint, or both, shall be made upon the At-
6	torney General and the head of the Government agencies
7	whose actions are complained of, and where injunction relief
8	is sought, upon the named officials sought to be enjoined.
9	"§ 2634. Notice
10	"Reasonable notice of the time and place of trial or
11	hearing before the Court of International Trade shall be
12	given to all parties to any proceeding, under rules prescribed
13	by the Court.
14	"§ 2635. Filing of official documents
15	"(a)(1) Upon service of the summons on the Secretary of
16	the Treasury in any civil action contesting the denial of a
17	protest under section 515 of the Tariff Act of 1930, or the
18	denial of a petition under section 516 of that Act, the appro-
19	priate customs officer shall forthwith transmit to the Court of
20	International Trade as part of the official record—
21	"(A) consumption or other entry and the entry
22	summary;
23	"(B) commercial invoice;
24	"(C) special customs invoice;
25	"(D) copy of protest;

1	"(E) copy of denial or protest in whole or in part;
2	"(F) importer's exhibits;
3	"(G) official and other representative samples;
4	"(H) any official laboratory reports; and
5	"(I) any bond relating to the entry.
6	"(2) If any of the items listed in paragraph (1) do not
7	exist in a particular case, an affirmative statement to that
8	effect shall be transmitted to the Court.
9	"(b) Within forty days, or within such period of time as
10	the Court of International Trade may specify, after service of
11	a summons on the Secretary of the Treasury, the administer-
12	ing authority established to administer title VII of the Tariff
13	Act of 1930, the United States International Trade Commis-
14	sion, or any other agency whose determination or action is
15	being contested, the Secretary or any other agency involved
16	shall file with the Court of International Trade, as provided
17	by its rules, the record which, unless otherwise stipulated by
18	the parties, shall consist of:
19	"(1) a copy of all information presented to or ob-
20	tained by the Secretary, the administering authority,
21	the Commission or any other agency involved, during
22	the course of the administrative proceedings, including
23	all governmental memorandums pertaining to the case
24	and the record of ex parte meetings required to be kept
25	by section 777(a)(3) of the Tariff Act of 1930; and

1	"(2) a copy of the determination, all transcripts or
2	records of conferences or hearings, and all notices pub-
3	lished in the Federal Register.
4	"(c) Any documents, comments, or information accorded
5	confidential or privileged status and required to be filed with
6	the Court of International Trade pursuant to subsection (b)
7	shall be filed with the clerk of the Court of International
8	Trade under seal and its confidential or privileged status shall
9	be preserved in the litigation. Notwithstanding the first sen-
10	tence of this subsection, the Court of International Trade
11	may examine, in camera, the confidential or privileged mate-
12	rial and may disclose such material under such terms and
13	conditions as it may order.
14	"(d) Within ten days, or within such period of time as
15	the Court of International Trade may specify, after service of
16	a summons and an application for an order directing the ad-
17	ministering authority or the International Trade Commission
18	to make confidential information available pursuant to section
19	777(c)(2) of the Tariff Act of 1930, the administering authori-
20	ty or the Commission shall file with the Court of Internation-
21	al Trade under seal the confidential information involved
22	along with pertinent parts of the record.
23	"(e)(1) In any other civil action in which judicial review
24	is to proceed upon the basis of the record made before an

25 agency, the agency, upon service of a summons or complaint,

- 1 or both, shall, within forty days of service of the summons,
- 2 transmit to the United States Court of International Trade a
- 3 copy of the contested determination, the findings or report
- 4 upon which it is based, a copy of any reported hearings or
- 5 conferences conducted by the agency, any documents, com-
- 6 ments, or other papers filed by the public, interested parties,
- 7 or governments with regard to the agency's action, identify-
- 8 ing and submitting under seal any documents, comments, or
- 9 other information obtained on a confidential basis and includ-
- 10 ing a nonconfidential description of the nature of such confi-
- 11 dential documents, comments, or information.
- 12 "(2) The confidentiality accorded such documents, com-
- 13 ments, and information shall be preserved in the litigation,
- 14 but the court may examine such documents, comments, and
- 15 information in camera if necessary to the disposition of the
- 16 action, and may order the disclosure of such documents, com-
- 17 ments, or information under such terms or conditions as the
- 18 court may order.

19 "§ 2636. Time for commencement of action

- 20 "(a) A civil action contesting the denial of a protest
- 21 under section 515 of the Tariff Act of 1930, is barred unless
- 22 commenced in accordance with the rules of the Court of In-
- 23 ternational Trade—
- 24 "(1) within one hundred and eighty days after the
- date of mailing of notice of denial, in whole or in part,

	au V
1	of a protest pursuant to section 515(a) of the Tariff
2	Act of 1930;
3	"(2) in any case in which notice is not mailed
4	within the two-year period specified in section 515(a)
5	of the Tariff Act of 1930, at any time after the date of
6	the expiration of the two-year period specified in such
7	section prior to the mailing of a notice of denial; or
8	"(3) within one hundred and eighty days after the
9	date of denial of a protest by operation of law pursuant
10	to the provisions of section 515(b) of the Tariff Act of
11	1930.
12	"(b) A civil action contesting the denial of a petition
13	under section 516 of the Tariff Act of 1930 is barred unless
14	commenced within thirty days after the date of mailing of a
15	notice transmitted pursuant to section 516(c) of the Tariff
16	Act of 1930.
17	"(c) A civil action contesting a determination by the ad-
18	ministering authority, under section 703(c) or 733(c) of the
19	Tariff Act of 1930, that a case is extraordinarily complicated
20	is barred unless commenced within five days after the date of
21	the publication of the determination in the Federal Register.
22	"(d) A civil action contesting a reviewable determina-
23	tion listed in section 516A of the Tariff Act of 1930, other

than a determination under section 703(c) or 733(c) of that

Act, is barred unless commenced within thirty days after the

- 1 date of the publication of the determination in the Federal
- 2 Register.
- 3 "(e) A civil action involving an application for an order
- 4 making confidential information available pursuant to section
- 5 777(c)(2) of the Tariff Act of 1930 is barred unless com-
- 6 menced in accordance with the rules of the Court of Interna-
- 7 tional Trade within five days from the denial of a request for
- 8 confidential information.
- 9 "(f) A civil action contesting a final determination made
- 10 under section 305(b)(1) of the Trade Agreements Act of 1979
- 11 is barred unless commenced within thirty days after the date
- 12 of the publication of the determination in the Federal
- 13 Register.
- 14 "(g) A civil action, other than one enumerated in sub-
- 15 sections (a) through (f), over which the Court has jurisdiction
- 16 pursuant to section 1581 of this title is barred unless com-
- 17 menced in accordance with the rules of the Court of Interna-
- 18 tional Trade within two years after the right of action first
- 19 accrues.

20 "§ 2637. Exhaustion of administrative remedies

- 21 "(a) A civil action contesting the denial of a protest
- 22 under section 515 of the Tariff Act of 1930 may be instituted
- 23 only if all liquidated duties or exactions shall have been paid
- 24 at the time the action is filed, except that a surety's obliga-
- 25 tion to pay such liquidated duties or exactions is limited to

- 1 the sum of any bond relating to each entry included in a
- 2 denied protest. If a surety institutes a civil action in the
- 3 Court of International Trade, any recovery of the surety
- 4 shall be limited to the amount of the liquidated duties or ex-
- 5 actions paid on the entries included in the action.
- 6 "(b) A civil action contesting the denial of a petition
- 7 under section 516 of the Tariff Act of 1930 may be instituted
- 8 only by a person who has first exhausted the procedures
- 9 specified in that section.
- 10 "(c) In all other cases, the Court of International Trade,
- 11 where appropriate, shall require the exhaustion of adminis-
- 12 trative remedies.
- 13 "§ 2638. New grounds in support of a civil action
- 14 "In any case in which the denial, in whole or in part, of
- 15 a protest is a precondition to the institution of a civil action in
- 16 the Court of International Trade, the Court, by rule, may
- 17 consider any new ground in support of the civil action if the
- 18 new ground-
- 19 "(1) applies to the same merchandise that was the
- subject of the protest; and
- 21 "(2) is related to the same administrative deci-
- sions listed in section 514 of the Tariff Act of 1930
- 23 that were contested in the protest.

1 "§ 2639. Burden of proof; evidence of value

2	"(a) The	decision	of the	Secretary	of	the	Treasury,	or
---	----------	----------	--------	-----------	----	-----	-----------	----

- 3 his delegate, is presumed to be correct. The burden to prove
- 4 otherwise shall rest upon the party challenging a decision.
- 5 "(b) Where the value of merchandise or any of its com-
- 6 ponents is in issue—

12

- "(1) reports or depositions of consuls, customs of
 ficers, and other officers of the United States and depositions and affidavits of other persons whose attendance cannot reasonably be had may be admitted into
 evidence when served upon the opposing party in ac-
- "(2) price lists and catalogs may be admitted in evidence when duly authenticated, relevant, and material; and

cordance with the rules of the Court:

- "(3) the value of merchandise shall be determined from the evidence in the record and that adduced at the trial whether or not the merchandise or sample thereof is available for examination.
- "(c) The requirements of subsections (a) and (b) apply in 21 any matter in the Court of International Trade except an 22 action transferred to the Court of International Trade pursu-23 ant to section 1582 of this title.

1	"8 2640	Scone	and	standard	Ωf	review
T	8 4040.	ocupe	anu	stanuaru	UΙ	TEATEM

	•
2	"(a) The Court of International Trade shall determine
3	the matter upon the basis of the record made before the
4	Court in the following categories of civil actions:
5	"(1) Civil actions contesting the denial of a pro-
6	test under section 515 of the Tariff Act of 1930
7	involving—
8	"(A) the appraised value of merchandise,
9	except to the extent judicial review is available
10	under subsection (b) of this section in the case of
11	assessment of countervailing or antidumping
12	duties;
13	"(B) the classification, rate, and amount of
14	duties or fees chargeable, except to the extent ju-
15	dicial review is available under subsection (b) of
16	this section in the case of assessment of counter-
17	vailing or antidumping duties;
18	"(C) the required redelivery of imports pur-
19	suant to the terms of an entry bond or the exclu-
20	sion of merchandise from entry or delivery under
21	the customs laws or pursuant to an action of the
22	Customs Service not taken upon the request or
23	direction of a court or other Federal agency,
24	except the exclusion of imports alleged to be
25	pornographic;

1	"(D) all charges or exactions imposed upon			
2	imported articles, except to the extent judicial			
3	review is available under subsection (b) of this			
4	section in the case of assessment of countervailing			
5	or antidumping duties;			
6	"(E) the refusal to pay a claim for a draw-			
7	back; and			
8	"(F) the refusal to reliquidate an entry under			
9	section 520(c) of the Tariff Act of 1930.			
10	"(2) Civil actions instituted pursuant to section			
11	1581(f) of this title.			
12	"(3) Civil actions instituted under section 516(c)			
13	of the Tariff Act of 1930.			
14	"(4) Civil actions for a protective order instituted			
15	pursuant to section 1581(g) of this title.			
16	"(b) In civil actions instituted under section 516A of the			
17	Tariff Act of 1930, the Court shall determine the matter as			
18	specified in subsection (b) of that section.			
19	"(c) In all other Civil actions, the Court shall determine			
20	the matter as provided in section 706 of title 5 of the United			
21	States Code.			
22	"§ 2641. Witnesses; inspection of documents			
23	"(a) Except as otherwise provided by law, in any pro-			
24	ceeding in the Court of International Trade, the parties and			
25	their attorneys shall have an opportunity to introduce evi-			

- 1 dence, to hear and cross-examine the witnesses of the other
- 2 party, and to inspect all samples and all papers admitted or
- 3 offered as evidence under rules prescribed by the Court.
- 4 Except as provided in section 2639, subsection (b) of this
- 5 section, or any rules prescribed by the Court, the Federal
- 6 Rules of Evidence apply to all proceedings in the Court of
- 7 International Trade.
- 8 "(b) In any civil action, the Court of International
- 9 Trade may order that trade secrets and commercial or finan-
- 10 cial information which is privileged and confidential or any
- 11 information provided to the United States by foreign govern-
- 12 ments or foreign persons, shall not be disclosed or shall be
- 13 disclosed to a party, its counsel, or any other person, only
- 14 under such terms and conditions as the Court may provide.
- 15 "§ 2642. Analysis of imported merchandise
- 16 "A judge of the Court of International Trade may order
- 17 an analysis of imported merchandise and reports thereon by
- 18 laboratories or agencies of the United States.
- 19 "\$ 2643. Relief
- 20 "(a) In any case instituted under section 1581 of this
- 21 title, the Court of International Trade may, if appropriate,
- 22 enter a money judgment for and against the United States.
- 23 "(b) If, in any civil action referred to in section 2640
- 24 (a)(1) or (a)(3), the plaintiff—

1	"(1) proves that the original decision was incor-
2	rect, and
3	"(2) introduce evidence as to the correct decision,
4	but, based upon the evidence introduced by the plaintiff and
5	the defendant, the Court of International Trade is unable to
6	determine the correct decision, such Court shall restore the
7	case to the calendar for all purposes, including such further
8	administrative or adjudicative procedures as may be neces-
9	sary to enable the Court to reach a determination as to the
10	correct decision. The order of restoration or remand shall be
11	final and appealable pursuant to sections 1541(a) and 2601 of
12	this title.
13	"(c) In addition to the order specified in subsections (a)
13 14	
14	and (b) of this section, the Court of International Trade may
14 15 16	and (b) of this section, the Court of International Trade may order in any civil action any form of relief which is appropri- ate including, but not limited to, declaratory judgments,
14 15 16 17	and (b) of this section, the Court of International Trade may order in any civil action any form of relief which is appropri- ate including, but not limited to, declaratory judgments,
14 15 16 17	and (b) of this section, the Court of International Trade may order in any civil action any form of relief which is appropri- ate including, but not limited to, declaratory judgments, orders of remand, writs of mandamus, and prohibition and
14 15 16 17	and (b) of this section, the Court of International Trade may order in any civil action any form of relief which is appropri- ate including, but not limited to, declaratory judgments, orders of remand, writs of mandamus, and prohibition and injunction.
14 15 16 17 18	and (b) of this section, the Court of International Trade may order in any civil action any form of relief which is appropriate including, but not limited to, declaratory judgments, orders of remand, writs of mandamus, and prohibition and injunction. "(d) In extraordinary circumstances, the Court of Inter-
14 15 16 17 18 19	and (b) of this section, the Court of International Trade may order in any civil action any form of relief which is appropriate including, but not limited to, declaratory judgments, orders of remand, writs of mandamus, and prohibition and injunction. "(d) In extraordinary circumstances, the Court of International Trade may grant appropriate preliminary or permanational Trade may grant appropriate prelimination appropriate p
14 15 16 17 18 19 20	and (b) of this section, the Court of International Trade may order in any civil action any form of relief which is appropriate including, but not limited to, declaratory judgments, orders of remand, writs of mandamus, and prohibition and injunction. "(d) In extraordinary circumstances, the Court of International Trade may grant appropriate preliminary or permanent injunctive relief upon a request by a person who would

25 shall consider whether the person making the request will

- 1 otherwise be irreparably harmed, and the effect of the re-
- 2 quested injunction on the public interest.
- 3 "§ 2644. Decisions; findings of fact and conclusions of law;
- 4 effect of opinions
- 5 "(a) A final decision of the judge in a contested case or
- 6 a decision granting or refusing an interlocutory injunction
- 7 shall be supported by---
- 8 "(1) a statement of findings of fact and conclu-
- 9 sions of law, or
- 10 "(2) an opinion stating the reasons and facts upon
- which the decision is based.
- 12 "(b) Upon motion of a party made not later than thirty
- 13 days after entry of judgment, the Court may amend its find-
- 14 ings or make additional findings and may amend the judg-
- 15 ment accordingly.
- 16 "(c) The decision of the judge is final and conclusive,
- 17 unless a retrial or rehearing is granted pursuant to section
- 18 2645 of this title or an appeal is made to the Court of Cus-
- 19 toms and Patent Appeals within the time and the manner
- 20 provided in section 2601 of this title.
- 21 "§ 2645. Retrial or rehearing
- 22 "The judge who has rendered a judgment or order may,
- 23 upon motion of a party or upon his own motion, grant a
- 24 retrial or rehearing, as the case may be. A party's motion
- 25 shall be made or the judge's action on his own motion shall

- 1 be taken, not later than thirty days after entry of the judg-
- 2 ment or order. In the event of the disability of the judge, the
- 3 chief judge shall assign the motion to another judge of the
- 4 Court of International Trade.

5 "\$ 2646. Precedence of cases

- 6 "(a) Each civil action involving the exclusion or rede-
- 7 livery of merchandise or arising under section 1582 of this
- 8 title, or sections 516 or 516A of the Tariff Act of 1930, shall
- 9 be given precedence over other cases on the docket of the
- 10 Court and shall be assigned for hearing and trial at the earli-
- 11 est practicable date and expedited in every way.
- 12 "(b) Of the civil actions given precedence under subsec-
- 13 tion (a) of this section, any civil action for the review of a
- 14 determination under sections 516A(a)(1)(B) or 516A(a)(1)(E)
- 15 of the Tariff Act of 1930 shall be given priority over other
- 16 such civil actions.

17 TITLE V—COURT OF CUSTOMS AND PATENT

18 APPEALS

- 19 SEC. 501. (a) Section 1541(a) of title 28, United States
- 20 Code, is amended by striking out: "and from any interlocu-
- 21 tory order granting, continuing, modifying, refusing, or dis-
- 22 solving as injunction, or refusing to dissolve or modify an
- 23 injunction, under section 516A(c)(2) of the Tariff Act of
- 24 1930".

- 1 (b) Section 1541 is amended by adding at the end there-
- 2 of the following:
- 3 "(c) The Court of Customs and Patent Appeals has ju-
- 4 risdiction of appeals from interlocutory orders of the Court of
- 5 International Trade granting, continuing, modifying, or dis-
- 6 solving injunctions, or refusing to dissolve or modify injunc-
- 7 tions.".
- 8 SEC. 502. (a) Section 2601(a) of title 28, United States
- 9 Code, is amended by adding the following new sentence at
- 10 the end thereof: "If a timely notice of appeal is filed by a
- 11 party, any other party may file a notice of appeal within
- 12 fourteen days after the date on which the first notice of
- 13 appeal was filed.".
- 14 (b) The first sentence of section 2601(b) of title 28.
- 15 United States Code, is amended—
- 16 (1) by inserting "or cross appeal" after "appeal"
- each time it appears; and
- 18 (2) by striking "which shall include a concise
- statement of the errors complained of".
- 20 (c) The third sentence of section 2601(b) of title 28.
- 21 United States Code, is amended by striking out "and the
- 22 Secretary of the Treasury or their designees" and inserting
- 23 in lieu thereof "and any named official".
- 24 (d) Section 2601(c) of title 28 is amended by inserting
- 25 the following after the first sentence: "Findings of fact shall

- 1 not be set aside unless clearly erroneous and due regard shall
- 2 be given to the opportunity of the trial court to judge the
- 3 credibility of the witnesses. A party may raise on appeal the
- 4 question of the sufficiency of the evidence to support findings
- 5 of fact, whether or not the party raising the question has
- 6 made an objection to such findings in the Court of Interna-
- 7 tional Trade or has made a motion to amend them or a
- 8 motion for judgment.".
- 9 Sec. 503. (a) Chapter 93 of title 28, United States
- 10 Code, is amended by adding at the end thereof the following
- 11 new section:
- 12 "§ 1546. Rules of evidence; powers in law and equity; ex-
- 13 clusive jurisdiction
- 14 "(a) Except as provided in section 2639 of this title,
- 15 subsection (b) of section 2641 of this title, or any rules pre-
- 16 scribed by the court, the Federal Rules of Evidence shall
- 17 apply in the Court of Customs and Patent Appeals in any
- 18 appeal from the Court of International Trade.
- 19 "(b) The Court of Customs and Patent Appeals shall
- 20 have all the powers in law and equity of, or as conferred by
- 21 statute upon, a court of appeals of the United States.
- 22 "(c) The Court of Customs and Patent Appeals shall
- 23 possess exclusive jurisdiction to review—

1	"(1) any decision of the Secretary of Treasury to
2	deny or revoke a customs brokers' license under sec-
3	tion 641(a) of the Tariff Act of 1930, or
4	"(2) any action challenging an order to revoke or
5	suspend a license under section 641(b) of the Tariff Act
6	of 1930."
7	(b) The table of sections for chapter 93 of that title is
8	amended by adding at the end thereof the following:
	"1546. Rules of evidence; powers in law and equity; exclusive jurisdiction.".
9	SEC. 504. (a) Chapter 167 of title 28, United States
10	Code, is amended by adding at the end thereof the following
11	new section:
12	"§ 2603. Judicial conference
13	"The Court of Customs and Patent Appeals is author-
14	ized to conduct an annual judicial conference for the purpose
15	of considering the business of the court and improvements in
16	the administration of justice in the court.".
17	(b) The table of contents for chapter 167 of such title is
18	amended by adding at the end thereof the following new
19	item:
	"2603. Judicial conference.".
20	TITLE VI—TECHNICAL AND CONFORMING
21	AMENDMENTS
22	SEC. 601. The first sentence of section 250(a) of the
23	Trade Act of 1974 is amended by striking out all that ap-

- 1 pears after "United States" and by inserting in lieu thereof
- 2 "Court of International Trade".
- 3 SEC. 602. (a) The second sentence of the second para-
- 4 graph of paragraph (b) of section 641 of the Tariff Act of
- 5 1930 is amended by deleting all that appears after "filing,"
- 6 and before "sixty," and by inserting in lieu thereof "in the
- 7 Court of Customs and Patent Appeals, within".
- 8 (b) The second paragraph of section 641(b) of the Tariff
- 9 Act of 1930 is amended by inserting the following immedi-
- 10 ately after the third sentence of that paragraph: "For pur-
- 11 poses of this paragraph, all relevant rules prescribed in ac-
- 12 cordance with sections 2072 and 2112 of title 28, United
- 13 States Code, apply to the Court of Customs and Patent
- 14 Appeals.".
- 15 SEC. 603. Section 1340 of title 28, United States Code,
- 16 is amended by adding at the end thereof the following: "The
- 17 Court of International Trade shall have jurisdiction of any
- 18 civil action, not within its exclusive jurisdiction, arising under
- 19 any Act of Congress providing for revenue from imports or
- 20 tonnage upon transfer from a district court as provided in
- 21 section 1582 of this title.".
- SEC. 604. Section 1355 of title 28, United States Code,
- 23 is amended by adding at the end thereof the following: "The
- 24 Court of International Trade shall have jurisdiction of any

)

- 1 such action or proceeding upon transfer from a district court
- 2 as provided in section 1582 of this title.".
- 3 SEC. 605. Section 1356 of title 28, United States Code,
- 4 is amended by adding at the end thereof the following: "The
- 5 Court of International Trade shall have jurisdiction of any
- 6 such action or proceeding upon transfer from a district court
- 7 as provided in section 1582 of this title.".
- 8 SEC. 606. Section 751 of title 28, United States Code,
- 9 is amended by adding at the end thereof the following:
- 10 "(f) When the Court of International Trade is sitting in
- 11 a judicial district, other than the Southern and Eastern Dis-
- 12 tricts of New York, the clerk of that district court or an au-
- 13 thorized deputy clerk, upon the request of the chief judge of
- 14 the Court of International Trade and with the approval of
- 15 that district court, shall act in the district as clerk of the
- 16 Court of International Trade in accordance with rules and
- 17 orders of the Court of International Trade for all purposes
- 18 relating to the case then pending before that court.".
- 19 Sec. 607. The second paragraph of section 1491 of title
- 20 28, United States Code, is amended by inserting "within the
- 21 exclusive jurisdiction of the Court of International Trade, or"
- 22 after "suits" the first time it appears in the first sentence.
- SEC. 608. The first paragraph of section 2414 of title
- 24 28, United States Code, is amended by inserting "or Court of
- 25 International Trade" after "court" in the first sentence.

- 1 SEC. 609. Section 1919 of title 28, United States Code,
- 2 is amended by inserting "or the Court of International
- 3 Trade" after "court" the first time it appears.
- 4 SEC. 610. (a) Chapter 125 of title 28, United States
- 5 Code, is amended by inserting immediately after section
- 6 1963 the following new section:
- 7 "§ 1963A. Registration of judgments of the Court of Inter-
- 8 national Trade
- 9 "(a) A judgment in an action for the recovery of money
- 10 or property entered by the Court of International Trade
- 11 which has become final by appeal or expiration of time for
- 12 appeal may be registered in any district by filing a certified
- 13 copy of such judgment. A judgment so registered shall have
- 14 the same effect as a judgment of the district court of the
- 15 district where registered and may be enforced in like manner.
- 16 "(b) A certified copy of the satisfaction of any judgment
- 17 in whole or in part may be registered in like manner in any
- 18 district in which the judgment is a lien.".
- 19 (b) The table of sections for chapter 125 is amended by
- 20 inserting immediately after the item relating to section 1963
- 21 the following:
 - "\$1963A. Registration of judgments of the Court of International Trade.".
- SEC. 611. Section 1331(a) of title 28, United States
- 23 Code, is amended by adding at the end thereof the following.
- 24 "The district courts shall not possess jurisdiction pursuant to

- 1 this section over any matter within the exclusive jurisdiction
- 2 of the Court of International Trade.".
- 3 SEC. 612. (a) Section 2602 of title 28, United States
- 4 Code, is amended to read as follows:

5 "\$ 2602. Precedence of cases

- 6 "(a) Each civil action involving the exclusion of mer-
- 7 chandise or arising under section 1582 of this title or sections
- 8 516 or 516A of the Tariff Act of 1930, shall be given prece-
- 9 dence over other cases on the docket of such court, and shall
- 10 be assigned for hearing at the earliest practicable date and
- 11 expedited in every way.
- 12 "(b) Of the civil actions given precedence under subsec-
- 13 tion (a) of this section, any civil action for the review of a
- 14 determination under section 516A(a)(1)(B) or 516A(a)(1)(E)
- 15 of the Tariff Act of 1930 shall be given priority over other
- 16 such civil actions.
- 17 "(c) Appeals from findings by the Secretary of Com-
- 18 merce provided for in headnote 6 to schedule 8, part 4, of the
- 19 Tariff Schedules of the United States shall receive preference
- 20 over all other matters.".
- 21 (b) The table of sections for chapter 167 of title 28,
- 22 United States Code, is amended in the item relating to sec-
- 23 tion 2602 to read as follows:

[&]quot;2602. Precedence of cases.".

- 1 SEC. 613. Section 3 of the Act of July 5, 1884 (23 Stat.
- 2 119), is amended to read as follows: "The decision of the
- 3 Commissioner of Customs on all questions of interpretation
- 4 arising out of the execution of the laws relating to the collec-
- 5 tion of tonnage tax and to the refund of such tax when col-
- 6 lected erroneously or illegally, shall be subject to judicial
- 7 review in the Court of International Trade as provided in
- 8 title 28, United States Code. In the Court of International
- 9 Trade, and upon appeal, if any, from that Court, the findings
- 10 of the Commissioner as to any fact, if supported by substan-
- 11 tial evidence, shall be conclusive.".
- 12 Sec. 614 (a) Section 1345 of title 28, United States
- 13 Code, is amended by adding at the end thereof the following
- 14 new sentence: "The Court of International Trade shall have
- 15 jurisdiction of any such action or proceeding upon transfer
- 16 from a district court as provided in section 1582 of this
- 17 title.".
- 18 (b) Section 1352 of title 28, United States Code, is
- 19 amended by adding at the end thereof the following new sen-
- 20 tence: "The Court of International Trade shall have jurisdic-
- 21 tion of any such action upon transfer from a district court as
- 22 provided in section 1582 of this title.".
- SEC. 615. Section 1337(c) of title 19, United States
- 24 Code, is amended by inserting immediately after "Appeals"
- 25 the following ", subject to chapter 7 of title 5, United States

- 1 Code," and, striking out the last sentence and inserting in
- lieu thereof: "Notwithstanding the foregoing, review of Com-
- 3 mission determinations under subsections (d), (e), and (f) as to
- 4 its findings on the public health and welfare, competitive con-
- 5 ditions in the United States economy, the production of like
- 6 or directly competitive articles in the United States, and
- 7 United States consumers, the amount and nature of bond, or
- 8 the appropriate remedy shall be reviewable only for abuse of
- 9 administrative discretion.".
- 10 Sec. 616. The second sentence of section 516A(c)(2) of
- 11 the Tariff Act of 1930 is amended so as to read as follows:
- 12 "In ruling upon a request for such injunctive relief the court
- 13 shall consider the factors set forth in sentence 2643(d) of title
- 14 28.".
- 15 Sec. 617. Any references to the United States Customs
- 16 Court, the U.S. Customs Court, or the Customs Court shall
- 17 be deemed a reference to the United States Court of Interna-
- 18 tional Trade.
- 19 Sec. 618. (a) The provisions of subsections (c), (d), (e),
- 20 and (f) of section 2631 of title 28, United States Code, as
- 21 added by section 401 of this Act apply to entries liquidated
- 22 on and after the date of enactment of this Act.
- 23 (b) This Act shall become effective on the date of its
- 24 enactment.

- 1 (c) Nothing in this Act shall cause the dismissal of any
- 2 action instituted prior to the date of enactment under jurisdic-
- 3 tional statutes relating to the Court of International Trade or
- 4 the Court of Customs and Patent Appeals in effect before the
- 5 date of enactment of this Act.
- 6 (d) Notwithstanding section 106 of the Trade Agree-
- 7 ments Act of 1979, any civil action in the Court of
- 8 International Trade on January 1, 1980, pursuant to the An-
- 9 tidumping Act of 1921, shall be governed by the provisions of
- 10 the Antidumping Act, 1921, in effect on the day before the
- 11 effective date of title I of the Trade Agreements Act of 1979.